

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Roger M. Haselton,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:03-CV-223
	:	
Jeffrey L. Amestoy,	:	
Marilyn S. Skoglund,	:	
and Frederic W. Allen,	:	
Defendants.	:	

OPINION AND ORDER
(Papers 5, 15, 17, 18, 19 and 20)

Plaintiff Roger Haselton, proceeding *pro se*, claims that the defendants, each of whom are or have been justices of the Vermont Supreme Court, violated his constitutional right to travel by refusing to overturn his conviction of driving with a suspended license. The defendants have moved to dismiss the complaint (Paper 15) on grounds of sovereign immunity, judicial immunity, and failure to state a claim for which relief may be granted. Since filing his complaint, Haselton has filed a series of motions, including: two motions to amend his complaint (Papers 5 and 17), a motion requesting federal court protection (Paper 18), a motion to stay state court proceedings (Paper 19), and a motion to proceed with a memorandum of constitutional law (Paper 20). For the reasons set forth below, the defendants' motion to

dismiss is GRANTED, and Haselton's motions, with the exception of his first motion to amend (Paper 5), to the extent that they require Court action, are DENIED.

Background

The background of this case was largely set forth in this Court's previous Opinion and Order on Haselton's motion for injunctive relief (Paper 16), and is repeated in part herein. Haselton's principal claim is that he has a fundamental constitutional right to use public highways for travel and transportation, and that his conviction for driving with a suspended license violates that right. (Paper 1). Haselton has attached to his complaint the July 18, 2003 decision of the Vermont Supreme Court affirming his conviction. (Paper 1, Attachment). In its decision, the court noted Haselton's assertion of his right to travel. The Vermont Supreme Court concluded, however, that Haselton's appeal was "completely unfounded," citing the rule that the constitutional right to travel is subject to the state's power to "'adopt reasonable measures for the promotion of safety upon our public highways in the interests of motorists and motorcyclists and others who

may use them.'" Id. (quoting State v. Solomon, 128 Vt. 197, 199 (1969)).

Haselton has provided few other background facts concerning his case. In his first motion to amend his complaint he states that, on August 19, 2003, he was "restrained because a tail light flickered on a farm truck plaintiff was traveling," was pulled over by the police, was cited for driving with a suspended license, and was forced to walk away from his vehicle. (Paper 5 at 5). Haselton also claims that on October 10, 2003, police in Morrisville, Vermont threatened to arrest him, presumably for driving without a valid license. (Paper 12 at 1). Haselton again asserts that such an arrest would violate his right to travel, and specifically his right to migrate to his "farm home in New York." (Paper 12 at 1).

In his first motion to amend his complaint, Haselton names approximately 20 additional defendants, including individual law enforcement officers, judges, unnamed state officials, and state agencies. (Paper 5 at 2-4). His claims against these individuals and agencies all arise out of their respective roles in

enforcing state traffic laws, which Haselton claims make them subject to his general allegation that he is being denied his fundamental right to travel.

Haselton's second motion to amend is more focused, pertaining primarily to his alleged incarceration on October 24, 2003. (Paper 17). Like his previous claims, his allegations are premised upon the charge that his right to travel is being violated. All of the allegedly wrongful acts related to his incarceration, including his arrest, fingerprinting, body search, and the confiscation of his heart medication, flow from this violation of what Haselton claims is a fundamental constitutional right.

Haselton's remaining motions are of the same tenor. In one motion, he asks the Court to prevent the state from enforcing its license statute, and claims that the arrests and confiscations of his medication are endangering his life. (Paper 18). Another motion asks the Court to stay the state court criminal proceedings (Paper 19), a step that this Court has already declined to take. (Paper 16 at 4 n.1). Haselton's most recent

motion "to proceed" largely restates the constitutional arguments set forth in his prior filings. (Paper 20).

Discussion

I. Motion to Dismiss

A. Standard of Review

Before the Court can consider the merits of the plaintiff's action, it must have subject matter jurisdiction. "The requirement that jurisdiction be established as a threshold matter . . . is inflexible and without exception, for jurisdiction is power to declare the law" and "without jurisdiction the court cannot proceed at all in any cause." Steel Co. v. Citizens for Better Env't, 523 U.S. 83, 94-95 (1998) (citations omitted). "Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3); Shipping Fin. Servs. Corp. v. Drakos, 140 F.3d 129, 131 (2d Cir. 1998) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

On a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court will accept as true the factual allegations in the complaint,

and draw all inferences in favor of the plaintiff. See Bolt Elec., Inc. v. City of New York, 53 F.3d 465, 469 (2d Cir. 1995). The Court's duty "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Sims v. Artuz, 230 F.3d 14, 20 (2d Cir. 2000) (quoting Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984)). The complaint must not be dismissed under Rule 12(b)(6) unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Equal Employment Opportunity Comm'n v. Staten Island Sav. Bank, 207 F.3d 144, 148 (2d Cir. 2000) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Because most *pro se* plaintiffs lack familiarity with the formalities of pleading requirements, the Court will construe *pro se* complaints liberally, "applying a more flexible standard to evaluate their sufficiency than [it] would when reviewing a complaint submitted by counsel." Lerman v. Bd. of Elections, 232 F.3d 135, 135-40 (2d Cir. 2000).

B. Sovereign Immunity

The defendants first argue that Haselton's claims against Justices Amestoy, Skoglund and Allen are barred by sovereign immunity. Under the doctrine of sovereign immunity, the Eleventh Amendment to the United States Constitution bars suits by private citizens against a state or its agencies in federal court unless the state has waived its immunity or Congress has properly abrogated that immunity. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98-99 (1984); Seminole Tribe v. Florida, 517 U.S. 44, 55 (1996). The protection of the Eleventh Amendment also extends to suits for monetary damages or other retrospective relief against state officers sued in their official capacities. See Brandon v. Holt, 469 U.S. 464, 471 (1985); Edelman v. Jordan, 415 U.S. 651, 668-69 (1974).

With respect to this case, it is clear that neither Vermont nor Congress has waived the sovereign immunity that protects the defendants from a damages action or an action for retrospective relief brought against them in their official capacities. Because Haselton is bringing constitutional claims, his complaint against state officials is necessarily brought pursuant to 42 U.S.C. §

1983. See Baker v. McCollan, 433 U.S. 137, 140 (1979). There is no indication in 42 U.S.C. § 1983 that Congress intended to abrogate state sovereign immunity, and the Supreme Court has specifically held that Congress did not intend to override well-established immunities such as state sovereign immunity when it enacted § 1983. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 67 (1989). It is equally clear that Vermont has not waived its sovereign immunity under § 1983. See 12 V.S.A. § 5601(g) (Vermont Tort Claims Act reserves Eleventh Amendment immunity for all claims not explicitly waived).

Moreover, the Supreme Court has held that, just as states and state agencies are not "persons" under § 1983, state officers acting in their official capacities are not "persons" within the meaning of the statute since they assume the identity of the government that employs them. Hafer v. Melo, 502 U.S. 21, 27 (1991). Therefore, to the extent that defendants Amestoy, Skoglund and Allen are being sued in their official capacities for money damages or other retrospective

relief, they are protected by the State of Vermont's sovereign immunity.¹

C. Judicial Immunity²

Haselton's claims against these defendants are further barred by absolute judicial immunity. Courts have long held that it is "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions, without apprehension of personal consequences to himself." Stump v. Sparkman, 435 U.S. 349, 355 (1978) (citing Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351 (1872)). Today, it is axiomatic that the "cloak of [judicial] immunity is not pierced by allegations of bad faith or malice, even though

¹ There is no suggestion in the complaint that the plaintiff is seeking prospective injunctive relief against these three defendants.

² The defendants urge the Court to construe the complaint as one against them in their official capacities only. In light of the plaintiff's *pro se* status, the Court will construe the complaint as naming the defendants in both their official and individual capacities. See Frank v. Relin, 1 F.3d 1317, 1326 (2d Cir. 1993) ("[T]he plaintiff ... should not have the complaint automatically construed as focusing on one capacity to the exclusion of the other.").

unfairness and injustice to a litigant may result on occasion." Tucker v. Outwater, 118 F.3d 930, 932 (2d Cir.), cert. denied, 522 U.S. 997, 118 S. Ct. 562 (1997) (citations and internal quotations omitted). The Tucker Court identified a two-part test for determining whether a judge is entitled to absolute immunity. "First, [a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' 'Second, a judge is immune only for actions performed in his judicial capacity.'" Tucker, 118 F.3d at 933 (quoting Stump at 356-57, 360-63).

Haselton has sued Justices Amestoy, Skoglund and Allen for their decision affirming his conviction in his criminal case. Haselton has made no allegation that the justices were acting outside of their judicial capacities or without jurisdiction. Moreover, in 1996, Congress amended § 1983 to bar injunctive relief "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity ...

unless a declaratory decree was violated or declaratory relief was unavailable." Haselton has not alleged either that a declaratory decree was violated or that declaratory relief was unavailable. Accordingly, the claims in his complaint are barred by judicial immunity.

D. The Merits

The Supreme Court has recognized a constitutional right to travel. See Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903 (1986). However, the constitutional right to travel guarantees citizens of one state the right to enter and leave other states or to be treated as welcome visitors in other states, Chavez v. Ill. State Police, 251 F.3d 612, 648 (7th Cir. 2001), not the right to drive a car without a license, Miller v. Reed, 176 F.3d 1202, 1205-06 (9th Cir. 1999). As the Ninth Circuit has noted, the Supreme Court, in Dixon v. Love, 431 U.S. 105, 112-16 (1977), held that "a state could summarily suspend or revoke the license of a motorist who had been repeatedly convicted of traffic offenses with due process The Court conspicuously did not afford the possession of a driver's license the weight of a fundamental right."

Miller, 176 F.3d at 1206. Indeed, the right of an individual to drive a vehicle is not a fundamental right; "it is a revocable privilege that is granted upon compliance with statutory licensing provisions." State v. Skurdal, 767 P.2d 304, 307 (Mont. 1988) (collecting cases); see also Boutin v. Conway, 153 Vt. 558, 564 (1990); Mackey v. Montrym, 443 U.S. 1, 10 (1979) (state has "paramount interest" in preserving safety of public highways).

One of Haselton's assertions is that the State of Vermont, and the defendants in particular, have deprived him of his "right of interstate and intrastate migration." (Paper 1 at 2). In the context of a conviction for driving with a suspended license, this argument is without merit. As stated by the Rhode Island Supreme Court:

The plaintiff's argument that the right to operate a motor vehicle is fundamental because of its relation to the fundamental right of interstate travel is utterly frivolous. The plaintiff is not being prevented from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it. What is at issue here is not his right to travel interstate, but his right to operate a motor vehicle on the public highways, and we have no

hesitation in holding that this is not a fundamental right.

Berberian v. Petit, 374 A.2d 791 (R.I. 1977). Because Haselton's claims are mistakenly premised upon a non-existent fundamental right to drive a vehicle on public roads, his claims against the original three defendants have no merit.³

Furthermore, for this Court to find in Haselton's favor would undermine the validity of his state court conviction. In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." Id. at 489-90. In other words, in order to recover damages for an allegedly unconstitutional conviction or imprisonment, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by

³ In his latest filing, Haselton asserts that he was driving a farm tractor, which is different from a motor vehicle, and that his right to drive a tractor on public roads carries greater protection than if he had been driving a motor vehicle. (Paper 20 at 8). The Court finds no support for this distinction in federal constitutional law.

a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. Id. at 486-87; see also Amaker v. Weiner, 179 F.3d 48, 51 (2d Cir. 1999); Covington v. City of New York, 171 F.3d 117, 121 (2d Cir 1999); Jackson v. Suffolk County Homicide Bureau, 135 F.3d 254, 255-56 (2d Cir. 1998). Therefore, to the extent that Haselton is seeking damages, his claim is barred.

II. Motions to Amend the Complaint

Fed. R. Civ. P. 15(a) allows a complaint to be amended "as a matter of course at any time before a responsive pleading is served." Haselton's first motion to amend his complaint (Paper 5) was filed before the defendants filed a responsive pleading. In fact, the defendants still have not filed a responsive pleading since, in the Second Circuit, a motion to dismiss is not a responsive pleading that terminates the right to amend without leave of the district court. See Barbara v. New York Stock Exchange, Inc., 99 F.3d 49, 56 (2d Cir. 1996) (citing 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1483, at 584-85 (2d ed. 1990)). Therefore, Haselton's first

motion to amend his complaint, which seeks to add numerous defendants and claims relating to the enforcement of Vermont's traffic laws, must be allowed.⁴

The second motion to amend (Paper 17) is different from the first both in its allegations and its timing. In the second motion to amend, Haselton claims that he was wrongfully imprisoned by the State of Vermont for violations relating to his driving without a valid license. He reportedly refused to take part in a work crew, was searched and cuffed, and his medications were confiscated. Because his imprisonment was allegedly illegal under federal law, Haselton claims that the confiscation of his medication amounted to larceny. (Paper 17 at 2).

⁴ In their motion to dismiss, the defendants appear to acknowledge the factual allegations in Haselton's first motion to amend as comprising part of the complaint. Specifically, the defendants reference the allegation that police in Morrisville, Vermont wrongfully stopped and ticketed Haselton on August 19, 2003. (Paper 15 at 2). This allegation appeared only in the motion to amend the complaint. (Paper 5 at 2). Indeed, it could not have been alleged in the original complaint, since the complaint was filed on August 13, 2003. (Paper 1). Despite this acknowledgement, the defendants did include in their motion to dismiss any arguments specific to the newly added defendants.

Haselton's second motion to amend seeks to add as defendants various unnamed officers from a correctional facility in St. Johnsbury, Vermont. Id. at 6. The second motion to amend was filed while the defendants' motion to dismiss was pending. Although a motion to dismiss does not constitute a responsive pleading under Rule 15, when a motion to amend the complaint is filed while a motion to dismiss is pending, a court may consider the motion to dismiss as addressed to the amended pleading. See Sterling Interiors Group, Inc. v. Haworth, Inc., 1996 WL 426379, at *1 (S.D.N.Y. July 30, 1996); 6 Wright, Miller & Kane, *Federal Practice and Procedure* § 1476 (2d ed. 1990) ("[D]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending."). Also, Rule 15 only allows one amendment as a matter of course. Fed R. Civ. P. 15(a). Therefore, to the extent that the defendants' motion to dismiss addressed any defects in the proposed second amended complaint, the Court may deny the amendment.

The claims in the second amended complaint are similar to those in the original complaint in that they challenge Haselton's criminal conviction and subsequent

incarceration. While the relief Haselton seeks is not entirely clear, he appears to be seeking a declaratory judgment stating that his conviction and incarceration were unlawful. Haselton may also be seeking damages.

As the defendants argued in their motion to dismiss, any constitutional claim under § 1983 challenging Haselton's conviction and incarceration is barred until he can show that his conviction has been declared invalid. See Heck, 512 U.S. at 486-87; Edwards v. Balisok, 520 U.S. 641, 648 (1997) (applying Heck to claims for declaratory relief). Haselton's claims against state officials, to the extent they seek damages or other retrospective relief, are also barred by sovereign immunity. See Brandon, 469 U.S. at 471. Because Haselton's entire claim in his second amended complaint is premised upon the argument that his conviction was unlawful, and because the proposed amendment consists only of claims for damages or declaratory relief against state officials, the second motion to amend (Paper 17) is DENIED.

III. Remaining Motions

The substance of each of Haselton's remaining motions has been dealt with in past Orders in this case,

and therefore will not be reviewed in depth here. Briefly stated, Haselton's request for "federal court protection again" (Paper 18) asks the Court to protect him from state prosecution. This is the same relief sought in Haselton's prior motion for "immediate protection from state police powers." (Paper 12). As this Court stated in its prior Order denying injunctive relief against the State (Paper 16), and as set forth above, Haselton's claims do not merit such relief. See Fair Housing in Huntington Comm., Inc. v. Town of Huntington, 316 F.3d 357, 365 (2d Cir. 2003) (movant for preliminary injunctive relief must show likelihood of success on the merits). Accordingly, Haselton's motion for federal protection (Paper 18) is DENIED.

Haselton has also moved for a stay of state court proceedings under Rule 34. (Paper 19). As this Court stated previously, a stay under Rule 34 is both unfounded and untimely. (Paper 16 at 4 n.1). Furthermore, if Haselton is currently being prosecuted in state court for traffic violations, this Court must abstain from interfering in that prosecution absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 45 (1971); Middlesex County Ethics Comm'n v.

Garden State Bar Ass'n, 457 U.S. 423, 431 (1982). No such circumstances have been demonstrated here. Haselton's motion for a stay (Paper 19) is, therefore, DENIED.

Finally, Haselton has filed a "motion to proceed." (Paper 20). This motion largely re-argues the merits of his constitutional claims. Haselton also requests an extension of time, although it is not clear what deadline he is seeking to extend. (Paper 20 at 1). He refers to the need to "appeal the judgement to dismiss the case," and may be under the false impression that the Court's denial of his motion for injunctive relief was a final order on his claims. Id. Because there has not, in fact, been a final decision on Haselton's claims, his request for an extension of time for appeal is not ripe, and is therefore DENIED.

Conclusion

For the reasons set forth above, the motion to dismiss defendants Amestoy, Skoglund and Allen (Paper 15) is GRANTED. Haselton's motion to amend his complaint (Paper 17), motion requesting federal court protection (Paper 18), motion to stay state court

proceedings (Paper 19), and motion to proceed (Paper 20) are DENIED.

Haselton's first motion to amend his complaint (Paper 5) is allowed as a matter of course. See Fed R. Civ. P. 15(a).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont,
this _____ day of March, 2004.

J. Garvan Murtha
United States District Judge